

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

UNITED STATES OF AMERICA

v.

CRIMINAL ACTION NO. 2:07cr114

LLOYD MARTIN GILBERT, JR.,

Defendant.

MEMORANDUM ORDER

Before the Court is Lloyd Martin Gilbert, Jr.'s ("Defendant") Motion for Release Pending Sentencing. Having fully considered the record, and after holding a hearing on July 11, 2007, Defendant's Motion for Release Pending Sentencing is **DENIED**.

I. PROCEDURAL HISTORY

On June 1, 2007, Defendant was charged in a criminal information with one count of Possession of Material Containing Child Pornography in violation of 18 U.S.C. § 2252A(a)(5)(B). Defendant waived indictment and pled guilty to the criminal information on July 2, 2007. The Court found Defendant guilty. Defendant's disposition was scheduled for November 7, 2007. Defendant and the Government filed pleadings on the instant motion on July 9, 2007.

II. LEGAL STANDARD AND DISCUSSION

Defendant argues that he should be released pending sentencing. Possession of Material Containing Child Pornography is defined as a “crime of violence.” *See* 18 U.S.C. § 3156 (stating that, “(a) As used in sections 3141-3150 of this chapter - . . . (4) the term ‘crime of violence’ means - . . . (C) any felony under chapter 109A, 110 [including 18 U.S.C. § 2252A], or 117 . . .”). In addition, pursuant to 18 U.S.C. § 3143(a)(2):

The judicial officer shall order that a person who has been found guilty of an offense in a case described in subparagraph (A), (B), or (C) of subsection (f)(1) of section 3142 and is awaiting imposition or execution of sentence be detained unless--

(A)(i) the judicial officer finds there is a substantial likelihood that a motion for acquittal or new trial will be granted; **or**
(ii) an attorney for the Government has recommended that no sentence of imprisonment be imposed on the person; **and**
(B) the judicial officer finds by clear and convincing evidence that the person is not likely to flee or pose a danger to any other person or the community.

(emphasis added). “Crimes of violence” are listed in 18 U.S.C. § 3142(f)(1)(A). Therefore, in order for Defendant to be released, in addition to a finding that Defendant is not likely to flee or pose a danger to others in the community, the Government must recommend no incarceration or the Court must find a substantial likelihood that a motion for acquittal or new trial will be granted.

The Government has stated in its pleading and at the July 11, 2007 hearing that it intends to argue for a sentence that will include incarceration. Defendant has been found guilty of the instant offense, so there is no substantial likelihood that a motion for acquittal or new trial will be granted. Therefore, pursuant to 18 U.S.C. § 3143(a)(2), Defendant must be detained regardless of any finding the Court may make on whether Defendant is not likely to flee or pose

a danger to any person or the community.

Defendant has also asked the Court to vacate its finding of guilt from Defendant's July 2, 2007 plea hearing. The Court does not find any justification for doing so. Accordingly, the Court will not vacate its earlier finding of guilt.

III. CONCLUSION

Having considered the arguments of both parties, the Court finds that Defendant cannot prevail under the appropriate standard as set forth in 18 U.S.C. § 3143(a)(2). Therefore, Defendant's Motion for Release Pending Sentencing is **DENIED**.

The Clerk is **DIRECTED** to mail a copy of this Order to Counsel and to the United States Attorney, Eastern District of Virginia, World Trade Center, Suite 8000, 101 West Main Street, Norfolk, Virginia 23510.

IT IS SO ORDERED.

/s/

Raymond A. Jackson
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia
July 11, 2007